

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:23-CV-00519-M-BM

JOHN DOE,

Plaintiff,

v.

SHELBY LEWIS,

Defendant.

ORDER

Plaintiff brings this action against Defendant for the unlawful disclosure of private images, in violation of 15 U.S.C. § 6851. [DE 1]. On January 13, 2025, the court denied Plaintiff's Motion for Default Judgement, finding that “[t]he well-pleaded allegations in the complaint are insufficient to establish [Defendant's] liability for conduct that violates § 6851.” [DE 27 at 3]. The court also ordered Plaintiff “to show cause on or before January 24, 2025, as to why this action should not be dismissed.” [DE 27 at 6]. The court warned that “[f]ailure to respond in a timely manner will result in the immediate dismissal of this action without prejudice.” *Id.* This deadline has passed, and Plaintiff has not filed a response, as ordered.

District courts have the authority to *sua sponte* dismiss inadequate complaints if “the procedure employed is fair to the parties.” *Robertson v. Anderson Mill Elementary Sch.*, 989 F.3d 282, 291 (4th Cir. 2021) (citing 5B Wright & Miller, *Federal Practice and Procedure* § 1357). A procedure is fair when “the party whose complaint stands to be dismissed” is “afforded notice and an opportunity to amend the complaint or otherwise respond.” *Id.*; *see also Hager v. DGP Partners, Inc.*, 903 F.3d 460, 464 (5th Cir. 2018) (“Fairness in this context requires both notice of the court’s intention and an opportunity to respond.”); *United Source One, Inc. v. Frank*, No. 23-

1481, 2024 WL 1108824, at *1 (4th Cir. 2024) (holding that a district court erred by denying a motion for default judgment and sua sponte dismissing the complaint without granting the plaintiff leave to amend).

The court's show cause order provided Plaintiff with notice of its intention to dismiss the complaint and eleven days in which to file a response. [DE 27 at 6]. In that time, Plaintiff did not move to amend his complaint or otherwise comply with the court's order. Having satisfied *Robertson's* notice and opportunity requirements, the court DISMISSES Plaintiff's complaint WITHOUT PREJUDICE for the reasons set forth in the show cause order [DE 27].

SO ORDERED this 31st day of January, 2025.


RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE